

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CITY OF NEW YORK,

Plaintiff,

- against -

EXXON MOBIL CORPORATION,
EXXONMOBIL OIL CORPORATION, ROYAL
DUTCH SHELL PLC, SHELL OIL COMPANY,
BP P.L.C., BP AMERICA INC. and AMERICAN
PETROLEUM INSTITUTE,

Defendants.

Case No. 21-CV-4807 (VEC)

STIPULATION AND ORDER REGARDING COSTS AND FEES

This Stipulation (“Stipulation”) is entered into between Plaintiff The City of New York and Exxon Mobil Corporation, ExxonMobil Oil Corporation, Shell plc (f/k/a Royal Dutch Shell plc), Shell USA, Inc. (f/k/a Shell Oil Company), BP p.l.c., BP America Inc., and American Petroleum Institute (collectively, “Defendants”).

WHEREAS, on April 22, 2021, the City of New York brought this action against Defendants in the Supreme Court of the State of New York;

WHEREAS, on May 28, 2021, this action was removed to the United States District Court for the Southern District of New York (ECF No. 1);

WHEREAS, on July 7, 2021, Plaintiff filed a motion to remand this action to state court (ECF No. 37);

WHEREAS, on October 4, 2023, Plaintiff’s motion to remand was denied without prejudice and with leave to refile in light of the Second Circuit’s decision in *Connecticut v. Exxon Mobil Corp.*, 83 F.4th 122 (2d Cir. 2023) (ECF No. 63);

WHEREAS, on October 20, 2023, Plaintiff submitted a renewed motion to remand this action to state court (ECF No. 68);

WHEREAS, on May 8, 2024, this Court granted Plaintiff's motion to remand (the "Remand Order") and, in that order, granted Plaintiff's request for costs and fees as to five of the six bases for removal contested in the renewed remand motion (ECF No. 81);

WHEREAS, the Remand Order found that Plaintiff is not entitled to costs and fees associated with the Defendants' sixth ground for removal, diversity jurisdiction, because "the Court cannot say that it was unreasonable for Defendants to press that argument";

WHEREAS, the Remand Order provided that "[t]he parties must meet and confer and attempt to reach agreement on the amount of such fees and costs. If the parties cannot reach agreement by June 28, 2024, the City must submit a fees application not later than July 19, 2024, with supporting documentation regarding the fees and costs it incurred in litigating those five grounds for removal" (ECF No. 81 at 23–24);

WHEREAS, on June 7, 2024, Defendants timely filed a notice of appeal of the award of costs and fees in the Remand Order (ECF No. 82);

WHEREAS, the parties have met and conferred about the amount of fees and costs, and Plaintiff is seeking \$68,262.46;

WHEREAS, Defendants do not agree that any award of costs and fees is warranted and do not concede that the amount of costs and fees sought by Plaintiff accurately reflects the actual costs and expenses incurred by the City and thus compensable under 28 U.S.C. § 1447(c);

WHEREAS, notwithstanding that disagreement and with a reservation of all rights, defenses, affirmative defenses, claims, and objections, including to the lack of personal

jurisdiction, the parties have stipulated that the amount of costs and fees to be owed, in the event the pending appeal results in an affirmance, shall be the amount sought by Plaintiff;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, as follows:

1. In the event the order awarding Plaintiff costs and fees is affirmed, Defendants agree collectively to pay \$68,262.46 to the City within 30 days following entry of the mandate;
2. By agreeing now to pay the City \$68,262.46 in the event the appeal results in an affirmance, Defendants do not in any way waive any rights or arguments they have with respect to the pending appeal, nor shall this agreement be asserted by the City or Defendants in support of any argument raised in Defendants' appeal of the award of costs and fees;
3. By entering into this stipulation, the City does not waive any rights or arguments they have with respect to Defendants' pending appeal or with respect to seeking costs and fees incurred in litigating that appeal;
4. Because the parties have reached an agreement as to the amount of costs and fees to be awarded to Plaintiff, Plaintiff will not be submitting a fee application, and no further action from the district court is required. Accordingly, the May 8, 2024 Remand Order is a final order for the purposes of the Second Circuit's appellate jurisdiction under 28 U.S.C. § 1291.

Dated: New York, New York
July 9, 2024

/s/ Hilary Meltzer

Hilary Meltzer
Alice R. Baker

Respectfully submitted,

/s/ Theodore V. Wells, Jr.

Theodore V. Wells, Jr.
Daniel J. Toal

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